IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Case No. CR-15-129-D
	)	
GREGORY JOHN MAUREK,	)	
	)	
Defendant.	)	

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TRANSCRIPT OF PROCEEDINGS

HAD ON SEPTEMBER 14, 2015, AT 10:00 A.M.

BEFORE THE HONORABLE TIMOTHY D. DeGIUSTI

U.S. DISTRICT JUDGE, PRESIDING

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MOTION TO SUPPRESS

Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

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I N D E X

PAGE

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P R O C E E D I N G S

(The following proceedings were had September 14, 2015, with Court, counsel, and defendant present:)

THE COURT: This is the case of United States vs. Gregory John Maurek, CR-15-129-D. This is a hearing on the defendant's motion to suppress evidence.

Appearances, please.

MS. BLACKBURN: Kerry Blackburn on behalf of the United States.

MR. AUTRY: David Autry for Mr. Maurek, and Mr. Maurek is present, your Honor.

THE COURT: All right. Thank you, Mr. Autry.

Mr. Autry, it's your motion. Are you ready to proceed?

MR. AUTRY: Yes, your Honor.

THE COURT: Please do so.

MR. AUTRY: Your Honor, Ms. Blackburn's witnesses are here and available. If she could present her witnesses, if that's agreeable with the Court.

THE COURT: Just have her present them and you cross-examine them?

MR. AUTRY: Yes, sir.

THE COURT: Is that acceptable with you, Ms. Blackburn?

MS. BLACKBURN: That's fine, your Honor.

THE COURT: All right. Please proceed.

9:37:51:15AM MS. BLACKBURN: Your Honor, the government calls Detective Robert Erdely.

THE COURT: Detective, please come forward, stand in front of the witness chair and be sworn.

(The witness was duly sworn.)

THE CLERK: Thank you. Please be seated.

ROBERT ERDELY,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BLACKBURN

Q Sir, would you please state your name and occupation.

A Robert Erdely. I am a detective with the Indiana County District Attorney's Office in Indiana, Pennsylvania.

Q At this time, is that a full-time job for you?

A It's a full-time job. I can work full-time hours. However, the reality is I work about half my month doing casework as a detective and the other half teaching law enforcement.

Q With regard to the half of the month that you spend working as a detective, are you assigned to a particular division and certain job duties?

A When I'm teaching?

Q When you're not teaching.

A Oh, I am the computer crime unit. I am the only one. I

9:38:56:27AM conduct online investigations and -- where I find people online committing crimes and ultimately execute search warrants. And also I conduct the computer forensics.

Q With regard to those investigations, do you have a specific expertise with regard to online investigations of child pornography and related child sex abuse crimes?

A Yes. Throughout the years I have been to numerous trainings and ultimately became a trainer in online investigations for the Internet Crimes Against Children Task Force.

Q For approximately how many years have you worked, at least as part of your job or prior to employment as a detective, in the field of computer forensics or computers?

A Over ten years.

Q You indicated that you are a trainer. In what areas are you a trainer?

A Online investigations, where we teach peer-to-peer investigations, technology in general, which would cover wireless networking, the interrogation of wireless routers. Those are my primary areas of expertise.

Q And what is peer-to-peer?

A Peer-to-peer is literally computer to computer, from one computer to another computer. So on the internet, the internet being a network of networks, there are different file-sharing programs that allow a user to set up a program

and share files that they've created or to share files that they've downloaded from other people.

So that's a general term which would cover many different programs. BitTorrent is specifically one of those peer-to-peer file-sharing networks.

Q With regard to your background and expertise, do you see in front of you what's been marked as Government's Exhibit 1?

A I do.

Q Can you tell us what that is?

A It's my CV.

Q As of this time, is there anything that you think you need to correct with regard to that document?

A No.

MS. BLACKBURN: Your Honor, the government would move to admit Government's Exhibit 1.

MR. AUTRY: No objection.

THE COURT: It's admitted.

Q (By Ms. Blackburn) Now, you said you train. Approximately, how many hours or instances a month do you train other individuals?

A At least two weeks out of the month, so ten days, eight hours a day. That's an average. And I have been doing that for -- I am involved more heavily in training over the past three years. However, I have been training law enforcement for in excess of six years.

9:41:30:18AM Q Have you ever had an opportunity to testify as an expert in court with regard to peer-to-peer online investigations?
A I have.
Q On approximately how many occasions?
A I think there were four I had listed in federal court, but there has been more than that testified in all three districts in Pennsylvania. And I can't recall the other instance, but there has been numerous times.
Q You mentioned earlier BitTorrent. Is BitTorrent a commercially-available software or file-sharing program?
A Yes. It's freely available on the internet. There are many versions of the software that you don't have to pay for. However, there are versions that individuals can buy and pay for.
Q Is there a corollary in law enforcement that is used to do investigations with regard to BitTorrent?
A Yes. There is a whole network of law enforcement that investigate network, plenty of which I have trained.
Q With regard to BitTorrent in particular, is there a particular program that is used to do the investigations?
A Yes, there is.
Q What is that called?
A Torrential Downpour.
Q On a day-to-day basis, what, if any, expertise or experience do you have with Torrential Downpour?

9:42:48:12AM A I was part of the development team of that program. We partnered with University of Massachusetts Amherst and developed the software.
Q With regard to the software, is there ongoing maintenance, for lack of a better word, or upkeep that somebody is in charge of with regard to that software program?
A Yes. I run the law enforcement system which helps it run. I am the administrator.
Q You indicated that you do law enforcement training. Is Torrential Downpour one of the softwares that you do training for?
A Yes, I do.
Q With regard to that training, at the end of that training are law enforcement individuals provided with a certification that would allow them to operate that software?
A Yes, they do.
Q This software, is there a charge for you to provide this software to law enforcement?
A No. The software is free to law enforcement.
Q With regard to your testimony here today, are you charging an expert fee to testify?
A I am not.
Q What, if any, compensation are you getting for this?
A Just covering my expenses to be here. There is no other compensation.

9:44:06:15AM MS. BLACKBURN: If I could have -- turn on the overhead, please.

Q (By Ms. Blackburn) Detective Erdely, in preparation for coming here today, did you put together a slide show to help demonstrate and explain the softwares?

A Yes.

Q In front of you or on the screen, there appears to be a slide. Is that slide part of the presentation that you prepared?

A Yes, it is.

Q With regard to BitTorrent, can you describe for us what is displayed on this first screen?

A This is just several pieces of software that operate on the BitTorrent file-sharing network. So BitTorrent is the network or the networking protocol. It's the rules that a program would have to follow in order to properly operate on this network. Just like you have web servers that would share our web pages, if you follow the web service protocol, I could write a browser like Chrome or Microsoft or Explorer.

So these are the actual applications that would run on the BitTorrent network. And it gets a little confusing because you see BitTorrent in the upper left. Well, BitTorrent is the protocol. It's the method in which the files are shared, but it's also a company and a program. So these are some of the more popular clients that are out there.

9:45:33:09AM Q When you say "client," does that mean that this is the software a person would get in order to be able to run BitTorrent?

A Yes. You can download much of the software for free. Again, some of them have paid versions. You would install it into your program. So any time I say the word "client," "application," or "program," those are all synonymous. It's the program running in Windows or a Mac-operating system that would allow you to share files and download files on the BitTorrent file-sharing network.

Q In this particular instance, there is one that appears to be a frog with Vuze. Is that one of those?

A Yes, it is.

Q Are there legitimate items that people can obtain with this type of software program?

A Yes. The BitTorrent network first requires that a user finds something referred to as a torrent file. It ends in a .torrent extension. And what that is is the set of instructions to the BitTorrent application or program on how to get the files. It's not the files themselves but the instructions on how to get the files.

BitTorrent, many legitimate pieces of software are delivered using this file-sharing network. And this is one example. But it also illustrates how you have to find a torrent file in order for the program to run. It's a two-step

9:47:00:06AM processor. There is division there.

So this is a free operating system that's available. And instead of having a user tie up the bandwidth on the web server, where this web page is hosted, a person could download the torrent. If you look in the lower left, it says BitTorrent. And then you see Ubuntu 1504. And then underneath that are all the different versions of the software.

So once you click on that, a torrent file would be downloaded to your computer. At that point, just by double clicking on that torrent file, it would load into whatever BitTorrent program you had installed. Vuze being one or uTorrent. And a user would see -- typically be prompted and would see the file or files that he or she would be downloading and be given an option to not continue the download or to cancel the download.

But if they acknowledge they wanted to download it, at times they will be prompted where they want to save it, things of that nature. But then the program would just start working. It would look at those instructions and begin downloading that material. So this is just one example of a website where you would find a torrent file.

Q Showing what's file number -- excuse me -- Slide No. 3 here, can you tell us what this demonstrates?

A So this is a closer look at the file-sharing network, how

9:48:30:18AM it would typically work. So in the upper left you see a web page. It's called The Pirate Bay. That website still exists. And what it is is an index -- a searchable index. It's really just a web page. Just like you can search out web pages in Google, on this particular website you can search out torrent files. And they're described. So I could put in keywords and find a torrent that contains material that I would be looking for.

So after doing these searches, by clicking the link a torrent will be downloaded just like the prior slide.

If we could move next.

Q And, actually --

A Oh.

Q -- just to go back for a moment, when we are talking about this, are you talking about the commercial version of the software and how it works or the law enforcement version?

A This is the commercial. This is the typical process to download material and share material on the BitTorrent file-sharing network.

Q Now, you referred to both Pirate Bay and Google. Can a person find torrents outside of something like Pirate Bay?

A Yes, they can. The Pirate Bay is a website dedicated to finding BitTorrent material, but I could use Google and search for whatever topic: Illegal copywritten music. If I search for torrents -- AC/DC torrent -- AC/DC being a group -- then I

9:49:55:27AM could potentially see a list of torrents that would be their songs or albums to download.

And so once I search the material, whether it's through this website or any other website, and I find a torrent, again, I would just have to download the file that ends in the .torrent extension. That's what you see here as we've advanced in this particular slide.

So once a user double clicks that torrent file, it actually loads the instructions on how to get the files into the file-sharing program, the BitTorrent program. And inside that torrent are addresses of a server that's referred to as a tracker. So torrents have a unique identifier that makes it -- that collection of files extremely unique that there is really no possibility of a -- of two different torrents having the same value except to be the same.

So the program -- the file-sharing program would connect to this tracker and ask a question. Regarding this unique torrent, this -- it's just a string of characters -- letters and numbers -- can you provide me download candidates? In other words, IP addresses that have been reported as sharing this content.

And so that's what you see here, the line drawn from the peer to the tracker is the BitTorrent application contacting the tracker trying to find IPs that have the material. And it's done -- and the way it does that is that the software

9:51:42:15AM makes a direct connection to the tracker and then the IPs would be delivered to the file-sharing program. And so that's where we're at right now. We are just getting a list of potential download candidates.

Q And when we are talking about somebody going to one of these torrent index websites, that's one way to get torrents and material on an individual's computer; is that correct?

A Yes, ma'am.

Q Additionally, is there a way for individuals to create their own torrents so that they then have -- don't have to download files but they have created files on their computer?

A Well, yes. So someone initially has to start sharing the material. So if I had a collection of files and I wanted to share it to anyone on this file-sharing network, most of the BitTorrent applications gives a user a way to create their own torrent file.

So if I had a folder full of movies, I would just simply point my BitTorrent application to the folder full of movies and it would create a .torrent file. The only piece that would be missing for me to actually start sharing that material is I would have to get the torrent out there. And so I would upload it to sites like The Pirate Bay so that other people could search for it, find it, and ultimately download it.

Q Are there incentives built in such that individuals would

9:53:04:21AM want to share?

A The incentives are actually built into the rules, the file-sharing network rules.

It's a tit-for-tat exchange. I am expected to give pieces of a torrent that I'm downloading if the person I'm connected to needs it, and they're expected to give me pieces back, the pieces that I yet need to complete the download process.

So, yes, it would download quicker when you're sharing material. People are going to give me the pieces -- more inclined to give me the pieces of that collection of files that I'm still lacking or needing.

Q When you say "inclined to," is that something that happens automatically with the software or something that an individual user has to do in order to facilitate this?

A It automatically happens. It's built in to the BitTorrent file-sharing protocol.

So now that I have the download candidates -- I have downloaded a torrent, it's loaded into my program, I have connected to a tracker and received download candidates -- then I can start connecting to these candidates. And what happens is the first thing I am going to do is confirm through -- it's a networking handshake. We are just going to basically say hello. And when I say that, it's the program is doing this automatically. Confirm that we're talking about

9:54:31:24AM the same torrent. I have a torrent I'm interested in getting pieces for. They would respond and confirm that they also have that torrent. And we do some handshaking. And there are slides upcoming that would further explain that.

And then ultimately I would report to the sharing client, if I'm running software, the pieces that I'm sharing, and they would in return tell me the pieces that they had and they were sharing. And I would make requests of those pieces.

Q By doing that, what happens then?

A And then the exchange starts. In the typical -- the standard BitTorrent client, you can see two more lines were drawn there. And it looks semi-chaotic off to the right, but that's that give-to-get exchange. The normal file-sharing program will try to download from many clients at once because it speeds up the downloading process. It adds redundancy and full tolerance to the network. So if there is 100 people sharing it and one person goes off-line, I could still get the material.

So that's trying to show the peer on the left not only finding multiple clients to download pieces from, but in turn sharing back to those peers, which are just other computers online running BitTorrent software.

Q Is it fair to say that if there are a hundred people sharing then you are then having a direct connect with a hundred other computers because you are drawing from each of

9:56:14:12AM those sources?

A Correct. The network -- that's how it's designed. The average everyday client that is free or that you pay for, we directly connect from computer to computer. We do that handshaking to make sure we are talking about the same torrent. We exchange information about the pieces we are sharing. And then the file transfer happens. It's all done through a direct connect. That's the standard BitTorrent client. That's how it's built.

Q And we talked about the commercial version here. Do you also have a slide to explain how the law enforcement version of the software works as well?

A I do. It's the next slide.

Q Can you tell us what this shows?

A So in law enforcement we have been investigating this network for approximately three years. And over time law enforcement, primarily me, we have identified torrents that contain illegal material, child pornography. So me being the administrator of a system and as one of the trainers, I have all these torrents that we have amassed through searching for them and through investigations. Because if I conduct an investigation and seize a computer, I can potentially learn about 10, 20, maybe 100 other torrents that I didn't know existed before that.

So the whole part of the BitTorrent network that I just

9:57:45:09AM showed you, the first part where we had to seek out these torrents, we don't need to do. I have the torrents that contain the illegal material. So I can give that to an investigator who wants to conduct peer-to-peer investigations. So that's why there is a red "X" drawn through that.

Q When you say that you can give it to them, does that mean it's given to them by you contacting them directly or through the software itself?

A Through the software itself.

Q So, essentially, it's built into the software that you use?

A Yes. The process to get the torrent, investigate the torrents is built into the software. And that's what that says. No need to download the torrent. I give them the torrent.

Q And what way, if any, does it differ on the tracker portion?

A So the second step of this, once it loads -- once we load a torrent into the BitTorrent application, the typical mechanism to identify download candidates would be to contact a tracker. So in lieu of that, we have law enforcement officers searching for individuals sharing these torrents that law enforcement possesses. And these are the law enforcement officers that were trained to do and conduct these investigations.

9:59:08:09AM So we put in place a system -- a law enforcement system where my search results could be seen by and shared to other law enforcement. Because the internet as a whole doesn't really care about distance like we're traditionally used to. If I'm searching for download candidates of a particular bad torrent, I am just as likely to see someone in California sharing that material as I am in Pennsylvania.

So if we share our search results, that investigator in California that maybe sees someone on an IP address that is believed to be in Pennsylvania, if he can just tell me about that IP address, I can use it as an investigative lead or investigative starting point.

I trained this way and I, myself, in using this software, give that search result no more weight than I would an anonymous phone call. Because the tool is designed to then try to connect to this IP address and confirm firsthand that, yes, the IP address does, in fact, have the torrent that someone else saw as a search result.

So I don't need to go to trackers. Law enforcement will share these search results, and I'll take that IP address, use it, and confirm through a direct connection like the standard client. The only difference is law enforcement told me about the IP address instead of a tracker.

And I do a direct connection to the peer like the standard software. We do a handshake like the standard

10:00:51:06AM software. And then we download the material from the sharing client. And that's confirmation to this information that I received from somebody else.

Q I went ahead and had her go forward. I think we stepped forward one click there. You started to describe the download process.

A So then I download from the IP address or the peer that I had learned about, assuming he's online, assuming he's still sharing that content, that particular unique torrent. But you notice there is only one line here and the second and third line wasn't drawn. That's because although there is peers surrounding what is labeled the suspect computer, we do something in law enforcement -- and this is true with all of our peer-to-peer tools -- we do something called a single source download.

Instead of speeding up the download process and getting the pieces from many sharing computers, I'm just going to continually ask the same IP address for pieces I need. And if he doesn't have a piece or he goes off-line, that's when the investigation would stop. In that way, I know that all the material downloaded came from that one computer. It's really just as simple as only asking one IP address. And we are being more restrictive on ourself as law enforcement than the standard client is. Because a standard client would download from multiple sources and it would happen very quickly

10:02:27:27AM typically.

If you wanted to turn your views being one standard BitTorrent client into a program that could download from a single source, you could very easily do that. There is free software that would restrict access to and from your computer from a single IP address instead of multiple IP addresses. So what law enforcement has done programmatically inside the law enforcement software, anyone could do with an IP-filtering piece of software. And there is free versions of it available on the internet.

Q Earlier you had spoken about the commercial software and a direct connect. The direct connect that is done with the law enforcement version, the software, does it, for lack of a better word, invade or go into the suspect computer more than the commercial version of the software?

A No. We build a detailed log of the things that are happening, but, no, the direct connection is the same. In order to do something like you're suggesting or asking if we do, it's almost an inconceivable task. Because there are so many BitTorrent clients, I would have to find some vulnerability, some back door -- whoever wrote Vuze, for instance, maybe made a mistake in the programming and I could get into secret hidden places of the computer. Well, I would have to find that same vulnerability in BitTorrent, in uTorrent, in all the different applications.

10:03:58:07AM No, we do the same handshake, we do the same exchange of data, and ultimately download the material in the same way except in our software -- the transfer is the same. We keep a detailed event log to show when things happened, when the material came to us. The standard client -- I don't know of a standard client that would have a detailed log, but I would equate that to being, you know -- I'm law enforcement, I just need to take good notes.

Q Now, you said earlier that the software is basically a sharing software. Does the law enforcement software share?

A No. If I had to put into categories how we differ, law enforcement can't share child pornography. So all of our law enforcement tools don't share. We turn off file sharing to ensure we're not part of the problem. We do single-source downloads. So I am going to get the whole download. Anything I download comes from that one IP address I am investigating. I'll ignoring any other download candidates that may be available, and then the detailed logging.

Q How many times would you estimate that you have taught the certification class for this software?

A Between 75 and 100 times.

Q As part of teaching that class, do you have the individuals taking the class go through some sort of validation with regard to the locks that are provided?

A Yes. On top of having the software validated --

10:05:32:06AM validation tested ourselves, we make that part of the curriculum. So the last thing done in class is typically that the investigator that I taught how to run the software and the whole investigative process would actually conduct a test in class to confirm that it's working properly. And the key points we want to make sure an investigator is confident and can trust in this software is that this detailed log, for instance, has to accurately record the dates and times. It has to accurately record the torrent file we're investigating. And it has to accurately record the IP address that's sharing the material to that.

So the way we do that is we have a server that is set up sharing material. It's not illegal, it's just pictures that aren't copywritten. It's innocuous material. We have the investigative software, and we actually investigate this validation server. And we download material. So I can show this to -- the software running, making a connection to a computer. I can show them the computer running a standard BitTorrent client sharing data back to the investigative software. They get to see both ends of the communication. It's as simple as noting the date and time and then looking in the log-in verifying it's accurate, noting the IP address sharing the material. And the investigator can see the connect and verify that it accurately records the IP address. And then, finally, that it properly records that unique

identifier to the torrent.

Q Based on the classes that you've taught, your personal experience both as an expert and in the investigations that you've done, have you ever found an instance where this program has resulted in an error in terms of misidentifying who it was taking from or how the system worked? Is there an error rate?

A No. I know of no instance. It's a computer program. It does what it's supposed to. It records the dates and times accurately. We set our time and clock on the computer. It uses that to record the dates and times. Every class concludes with a test, and it's always worked.

Q Now, you've talked about the version that law enforcement would use in the field. Specifically, what steps do they have to take from their end before they would begin their investigation to operate the software?

A Well, then they would need to install it on their investigative computer when they get back to their office. They're licensed to use the software. They're issued a license. They input the license, and then they just configure the software to investigate IP addresses seen by other law enforcement through the searching of this network that appear to be in their jurisdiction.

We do that through a commercial website. It's called MaxMind, M-A-X-M-I-N-D. And they can take an IP address and

10:08:33:09AM tell you what state it's in and, with pretty good accuracy, what city they believe it's in. That way we don't waste our time. I'm in Pennsylvania. Why would I want to investigate people in California? It just helps us. We don't rely on those results except for to restrict and weed out the IPs I'm not interested in. That's where it ends, because I'm going to rely on the subpoena results from the internet provider to tell me exactly where that IP address is being used and who the subscriber of that internet service was.

Q So the individual in the field that's using the software, would they then be opting for a particular location based on what you've described in a particular person, I guess, based on -- or identity?

A Yeah. They could just -- they could simply tell the software, I want to investigate people in the U.S., and investigate the whole country. Or people in Pennsylvania. Or people in Pittsburgh, Pennsylvania. And typically a lot of times we just target at the state level and then I can actually see the people. If I was here in Oklahoma, I would just look at the people in Oklahoma City.

Q By doing that, do they then have a list of candidates in their geographic area to choose from?

A Yes. And those are what I've equated to being anonymous tips. But, yes, it would be a list of IPs presented to the software.

10:09:56:12AM Q Do they then take an action with regard to the candidates if they want to look at a particular candidate?
A Then they can download from them and review the downloaded material, verify that it is, in fact, illegal. There would be the detailed logs to confirm when those events happened, when the file-sharing occurred.
Q You discussed earlier that individuals can both download or create their own torrents to obtain and put out these particular materials. Can you describe that for us?
A And this is Vuze, actually, where I could point to a single file, if you look two-thirds of the way down the image, single file is selected. Or directly full of files. And then -- it's a wizard. I just hit next. It would go through and just create a torrent file. The only step left at that point would be to let my software run sharing these files that I have just created a torrent for. And then I would have to get that torrent out to the world, so I do that through -- or could do that through a website like The Pirate Bay. I just upload the torrent, and then it's immediately searchable by users of that website.
Q And can you describe to us exactly what is in a torrent?
A So this is an example of what a torrent would be. If a torrent had three files in it -- tree JPEG, flower MPEG, and ocean JPEG -- what happens is it actually -- if you can picture those files all lined up in a row, and it will specify

10:11:26:21AM how big each piece of data should be. And those are the pieces I was referring to as being traded.

So in this case, you can see that piece zero completely encompasses tree JPEG and is actually the beginning of the movie flower MPEG -- mpg. So if I were to download piece zero, I would have all of tree JPEG. It's sitting in a folder on my computer wherever I specified, and I could see it right away. It's available to me. I don't need to have all the pieces to see the files if there is multiple files in the torrent. I just need to have downloaded all the pieces required for that file to exist completely on my system.

If I were to get all four pieces, I would have all four files. If I only had piece zero and piece three, I would have completely downloaded two pictures, tree JPEG and ocean JPEG. But yet I was missing a couple of pieces to complete the movie flower.mpg.

So if you look below in the two boxes, the left box being the information that is found in the torrent and then there is actually example data to the right. So one thing about the BitTorrent network is that that unique identifier to the torrent that we use when we go to trackers, for instance, to find download candidates, it includes the -- that file hash of the data, those pieces that you see above, piece zero, piece one, piece two. It uses the secure hash algorithm hashing method. It's very, very reliable. It's used in computer

forensics.

And the BitTorrent network actually uses that hashing to identify the data that make up a torrent. Where it's unique, though, is that the -- the unique identifier to the torrent not only is a hash of that data that is the files being traded. It actually includes the file names and the folders that they live in.

So before I even start an investigation on the torrent, I know how the files are named, I know what folder they live in, and then I ultimately know the data. And I can be as sure of that as the secure hashing algorithm is the probability of it being wrong, which is inconceivable the number is so great.

So that's just basically what makes up a torrent, which is it will describe the folders they live in, the file names, how big the files are, the number of pieces that make up a torrent, how big each piece should be, and then the SHA-1 hash of every piece of data. We use this same hashing in computer forensics.

Q With regard to this particular testimony, did you receive some materials from an individual names Chris Lamer prior to your testimony here today?

A I did.

Q Did that consist of a series of six logs related to torrents?

A Yes.

10:14:45:03AM Q In talking with Detective Lamer, did you ascertain that there was one torrent in particular to focus on with regard to your testimony?

A Yes. I focused in on one of the six. However, I reviewed all six logs.

Q And with regard to the logs, if you go to the next slide, does this particular document have some relationship to the logs that you received?

A Yes. This is one of the torrents that was investigated.

Q And it appears that there are big, blue boxes at the top. Can you tell us what, if anything, that is covering?

A That's the unique identifier. It's also referred to as an info hash. And it's a unique identifier to a torrent that contains child pornography. So we redacted the ending portion because if you had that value, you could very easily seek out that material on the internet and find the same torrent.

Q With regard to this particular torrent, did you recreate this based on the information that you got?

A Yes. I actually opened the exact same torrent that calculates the same info hash. And you can see the guts, so to speak, that make up a torrent, what's inside. I have made it human readable using a program that also the university developed for us.

Q And what can you tell us about this torrent?

A Well, it defines 36 different files and each piece should

10:16:10:03AM be four megabytes, which makes it a very,very large collection of file. Almost nine gigabytes. That's a lot of material.

There is comments, tells you where the torrent -- this particular torrent was downloaded from. Although it could exist in many places on the internet.

Then on the files box -- I have one expanded, but it tells you all the file names. And then the second file down it actually has expanded the information that is hidden. So you hit the little plus sign, and it tells me it's index one. So meaning it's file one, but that's a little confusing because the torrents are numbered starting counting at zero. So the second file is actually named index one.

And then it tells how big the file is. It tells you what pieces that that -- this movie file lives in. So if I was able to download piece 275 through 457, then I would have that whole file. And immediately I could start viewing it.

And then you can see the folder lives in Web video collection. There is a backwards slash and then preteen, space, HQ. All of that is defined by the torrent. And that's the stuff the person downloading the material would see. If I load a torrent into my BitTorrent application, I'm going to see those directly names and then I will see those file names, because it's defined by that info hash. It has to be.

Then you finally see all the SHA-1 hashes of every piece. So you would have to scroll down, but there is 2,256 pieces in

10:17:49:09AM this torrent. So I have 2,256 SHA-1 hashes of every piece.

Then finally at the bottom is a list of those trackers. If you think back to my earlier presentation where the standard client would reach out to a tracker to find download candidates, that's also in the torrent. That's needed to make it work.

Q Again, when you say "reach out," is that something that the user has to do in an affirmative step or is that something the software is made to do?

A Yeah. BitTorrent clients automatically do it. It's not -- as soon as they double click a torrent and it loads into their BitTorrent program, the stuff I am describing just happens.

Q Did you have -- also have an opportunity to make some slides about the downloads -- the downloads within that particular torrent as well?

A I did. So there were six torrents on March 18, 2015. And I took excerpts of that log to explain what they mean. And all six logs listed the IP address of the transfer as being 68.97.10.183, port 6881. So the IP address is unique to the internet customer at that moment in time. The port actually will identify the program or application that is running on that computer. So if you think -- if you want an analogy, the IP address could be compared to a home address.

A port would be what door or window would I want to enter

10:19:30:27AM the house through. So, for instance, if I am a web server, I am listening on port 80. And on that same computer, I could be a mail server and I am listening on port 25. This BitTorrent application was waiting for connections on port 6881.

In this detailed log, which is those good notes that I spoke of, that the program takes for us during the undercover session, it dates and time stamps the activity. So on March 18th at 2:57 a.m., the download was added to the program as a candidate, and the IP address and port being investigated were just as I described.

Q Is there anything else you need from this slide?

A No. It relates the current date and time back to UTC in the middle entry, but that's all it does.

So then in that same log it's going to define what torrent we're talking about. This is that unique identifier to the collection of files. In the log it tells us how many files are described by that torrent, how big the entire collection of files would be if it was all downloaded, how many pieces make up that torrent, and then how big each piece is.

Then next.

So then what happens is it will go out and create the directory structure on your computer. And I like comparing this to being an empty bucket. So I need to create the

10:21:13:15AM directory structure defined by the torrent just like the standard client would, and it's an empty file. There is no data yet. So that once a client starts sharing pieces with me, I can spill that data right into the right bucket. So that's what's being showed here. It says created uninitialized file zero. You can see the path is just like the torrent described it as being. And then we give that first file a name that's also defined by the torrent. We are just following the instructions in the torrent.

At 2:57 a.m., on March 18th, a direct connection was made from the investigative software to the sharing computer. And that's what the "connected" refers to. This is the same type of connection that a standard client would have.

Second line says: Attempting to negotiate message stream encryption with client. Then the third line is saying it was successful.

So BitTorrent clients -- modern BitTorrent clients, what it will do is try to encrypt the communication between the sharing computer and the connecting computer. It's a standard thing that happens in the normal software. So we follow the same rules. If a piece of -- a client or an application we're connected to wants to be encrypted, it can choose to be encrypted. Sometimes it doesn't choose to be encrypted so we don't encrypt it. It doesn't matter to us really. But the way that it's implemented, it would prevent someone in the

10:22:45:00AM middle -- like the internet provider, if they wanted to snoop on the communication, what's happening on my business, they wouldn't be able to see what's happening between these two sharing computers. That's what that's about. It's in the log, so I thought it was worth mentioning.

So here is the portion of the log where we do that handshaking, the client confirms, yes, I have that info hash. I have that torrent that is very uniquely identified through that string of letters and numbers. The client supports BitTorrent Fast Extension and then extended handshake. I will show you the extended handshake, I think, on the next slide.

Q If I could stop you for a second. When you are referring to an "info hash," is the info hash the torrent?

A It is the torrent. It's a unique identifier to the torrent. It's actually a SHA-1 hash of all that information I talked about: The file names, the folders, the SHA-1 hash of every piece of data. So it's just another hash. It's a SHA-1 hash. Very reliable means of hashing.

Q Okay.

A Sent extended handshake message. Sent "have none" message. So that is the investigative software basically telling the computer we have connected to that we're not willing to share any piece of data. I told you that law enforcement software, we can't -- we can't share. None of our software shares data back. So that is a standard message on

10:24:16:15AM the BitTorrent network. If the client I connected to had no pieces to share with me, they would have said the same exact thing. "Have none."

Received a bitfield message. So what that is -- and I am just going to -- oh, it's down below. There is 2,256 pieces. So the bitfield message is the sharing computer telling me exactly what pieces they have to share. That way I can choose to download the ones that I still need. The standard client -- maybe I already have half of the collection or I have a thousand pieces. So I am going to ask for those 1,200 missing pieces.

So that's part of the handshaking that happens. And the standard client -- and we do the same thing. And literally -- it says bitfield message, but if you picture -- if you picture 2,256 positions, and each position could be a one or a zero, a zero meaning I don't have it, a one meaning I have it, that's literally what it is. It's a bitfield message. I don't have piece zero but I do have piece one, I do have piece two, but I do have piece three. So now I can pick which ones I want.

And we summarize it by saying at this moment in time when we first started this investigation -- I said "we," but it's Detective Lamer -- there were 231 pieces possessed at that moment in time. So the sharing computer had about 10 percent of the whole collection. And there were 36 files in the torrent. So if I am just speaking in generalities, that means

10:25:53:21AM he probably had about 3.6 videos. That's 10 percent of 36; right?

Next slide.

So in the extended handshake, the one thing that's interesting to me as an investigator -- but this is the standard message that they send to any client, he will tell me what version of software he is running. That's important for me to document. We want to document all the information, but I need to know as an investigator what kind of software the individual is running because there is BitTorrent clients that runs on mobile phones, Android applications, on Apple devices, on Linux operating system or a Macintosh operating system or a Windows operating system. I need to know who I should bring to a search warrant. So that's something we document. And it's -- we are going to go in the door knowing that the software claimed to be Vuze version 5.6.

And then once the pieces are downloaded, a SHA-1 hash is made of every piece. Because there was 2,256 pieces and whatever number of pieces were downloaded in this case, I would want to calculate the SHA-1 hash. Then inside the torrent was a list of all the piece hashes. All piece zero should be SHA-1 hash, whatever it was.

So by hashing the piece I downloaded from the sharing client, I can compare it to what the torrent said it should be, and I can verify with certainty that, yes, I got the

10:27:30:15AM correct data. It is, in fact, what the torrent says it should be.

Q And we are going along and apparently -- and you have been talking about a lot of different pieces and different things that are in the logs. What you have laid out here, is this basically a word for word what's in those logs?

A There is more information. I took out excerpts of all the different types of communication you would see in the log.

Q The log itself for something like this, would it be fair to see it can run 800, 900, a thousand pages?

A Yes. Depending on -- this is nine -- almost nine gigabytes of data. It would be hundreds of pages most likely. Could be even thousands of pages. If it's a small video it could be a dozen pages.

So then after we confirm that the pieces were accurate, we can actually know what files we've completed the downloading process of. So file 31 was completed but yet I didn't get all of the 32nd file. In the 33rd file, no pieces were received. So the log will detail to us what files completed the downloading process. And all of the material came from that one IP address we connected to.

Then finally we can calculate two different types of hashes for all the completed downloads, and that's at the end of the log. So we calculate here the SHA-1 hash and MD5 hash. It's just two different mathematical algorithms that we can

10:29:06:21AM pass data through that will spit out a fixed length identifier. It's going to be unique to that data regardless of how the file is named.

Q When you say that you can "calculate" it, is that something that the law enforcement individual doing the investigation does or is that something that the software automatically does?

A It's the same -- it's something the software automatically does. There are free programs out there that you can download and hash a file that you just downloaded, but we just automate the process.

Q Could you look in front of you? I believe there is Government's Exhibit No. 2.

A Yes.

Q Can you tell me, is that a copy of the presentation you've just done?

A Yes. It appears to be complete. The only thing you would be missing is the animations. But, yes.

MS. BLACKBURN: Your Honor, the government would move to admit Exhibit 2.

MR. AUTRY: No objection.

THE COURT: It's admitted.

MS. BLACKBURN: No further questions at this time, your Honor.

THE COURT: Cross-examination?

10:30:04:24AM MR. AUTRY: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. AUTRY

Q So, Detective, as I understand it, the Torrential Downpour program that you talked about earlier, that's an enhanced version of the BitTorrent program? Is that right?

A It is a BitTorrent application. I just would want to know what you mean by "enhanced."

Q Well, it's not the same as the regular BitTorrent application that's available to anybody in the public. This is some kind of proprietary software that modifies the ordinary, for want of a better term, BitTorrent network. Is that correct?

A It's designed -- well, I would say that all these different BitTorrent programs -- and on the first sheet I listed several of them -- they are all different. They all follow the BitTorrent protocol. And the differences in ours is -- I threw into those three broad categories. So enhanced? It's different, but all of them are different with different features and options. Ours doesn't share, ours takes good notes, and ours -- detailed notes. We don't -- oh, and we do a single-source download, so we restrict our download from one IP.

Q All right. So these -- I don't know, what do you call these? Applications?

10:31:26:09AM A Applications or programs.
Q Okay. Programs. These are the ones that are available to the general public; is that correct?
A Those are some of them. There's hundreds.
Q Oh, okay. And the Torrential Downpour program that you've been talking about that is used exclusively by law enforcement, it has those differences you talked about; correct?
A Yes.
Q Okay. And it's not available to the general public; true?
A No.
Q Okay. And you developed this particular software in cooperation with the University of Massachusetts at Amherst; is that correct?
A Yes, sir.
Q Okay. So you actually helped develop it or create it?
A Yes. I wasn't the primary programmer of the tool. I worked with the developer that did. I worked on the system where law enforcement can share their search results with other law enforcement --
Q Okay.
A -- the back end to the program. So we worked together day in and day out for quite some time to develop it.
Q Okay. And that's some kind of proprietary software;

10:32:27:27AM correct?
A Proprietary? Yes. Meaning that we have it and no one else -- law enforcement has it. We give it to law enforcement.
Q Okay. You talked about training individuals to use this particular program or this particular software.
A Yes, sir.
Q And do you know whether Detective Lamer, who conducted the investigation in this case, is certified to use the Torrential Downpour software?
A In speaking with him, he told me the training that he was at. I don't have -- I didn't look up in the records of ICAT training. I just would be taking him at his word.
Q All right. So when Detective Lamer or whoever in law enforcement throughout the United States is using this -- I will call it an enhanced or modified version of the BitTorrent network that's available exclusively to law enforcement -- when he is using that, it's not like he's sitting there at his computer trying to access pieces of information from other computers using an ordinary file-sharing program; right?
A No. It's automated like the standard program is automated. You load the torrent and it runs.
Q Right. But it's not like he is sitting there with a standard version of the BitTorrent network looking for IP addresses to people who have these particular torrents or

10:33:47:03AM particular files; correct?
A No. It uses the system I just described.
Q All right. And the system you just described differs from the types of programs or software available to the general public in that it allows you to isolate or focus on a single source or a single IP address; is that correct?
A Correct. That's built into the program.
Q All right. And if I was on a regular BitTorrent network and put in a search term looking for files of a particular subject, I would have to be taking pieces of those files from any number of different computers or peers; is that right?
A Well, you said "have to," so I would disagree with that.
Q Well, isn't that generally how it works?
A The standard client can download from multiple clients, probably does prefer because it would speed up the download. If there was only one sharing client out there, it would download the whole thing from one client. And I did describe in my testimony how you could use a standard program like Vuze and also make it a single-source downloading program by adding an IP filter. But you said has to, so that's why I disagreed.
Q Okay.
A That's why I disagree with your question.
Q Okay. Well, here is where my confusion comes in. You say that somebody could get a standard piece of software or computer equipment that would allow you on a file-sharing

10:35:13:06AM program to download from a single source; right?
A Yes, sir.
Q And the enhanced program, Torrential Downpour, allows you to download from a single source; right?
A Yes, sir.
Q Okay. So what's the difference then? If I can, you know, use some kind of ordinary software that I can get just as a citizen or a consumer and download from a single source, why do you need this super fancy enhanced version of the network?
A Well, I am not sure what you mean by "super fancy."
Q Well, okay. That's -- I am not describing it that well.
A Okay.
Q But the -- what I will call the proprietary law enforcement software. You are not telling the Court that the proprietary law enforcement software is identical to what's available to the general public, are you?
A No. Actually, I described that all these are different, every single one, of the ones available to the general public. They are all different in different respects. But to go to your question that was before that, that preceded that, is that the fact that we developed the software to only download from one IP address basically removes any possibility of error. We've tested it. It's built right into the program.
Again, we are more restrictive on ourself. We download

10:36:32:06AM from one IP instead of multiples. That can happen normally on the network. If only one person is sharing the torrent, I would get it from one person or I could ensure it through using a second piece of software where I could just punch an IP address in and say only communicate with that one IP.

So our software is different absolutely. The program is designed to just download from a single IP. I just was illustrating to the Court that anyone can do it --

Q Right.

A -- with software that's already out there. They don't even have to develop it. It's already out there.

Q Okay. In this particular investigation -- well, let me back up. Were you personally involved in this particular investigation?

A I was not.

Q All right. Do you have any knowledge as to whether or not in this particular investigation Detective Lamer downloaded torrents from a single source, one computer, using the law enforcement software? Or was it from multiple sources?

A I reviewed the logs generated in this investigation. And if I'm allowed to speak of that, then I would say I know that, yes, he was running Torrential Downpour and, yes, he downloaded from a single IP address.

Q Okay. Because that's what Torrential Downpour is

10:37:53:21AM designed to do, is to download from a single address rather than from multiple addresses; correct?
A Correct. I looked at the logs.
Q All right. And that's one of the things that makes the program or the software somewhat unique; right?
A Somewhat unique, yes.
Q All right. And the other thing that makes it somewhat unique is that it creates a detailed log; is that right?
A Correct.
Q Okay. And the ordinary, I guess, file-sharing software on the BitTorrent network does not create that detailed log that this law enforcement software creates; right?
A Well, I can't speak for every program out there. There is logging events in different applications. But, generally speaking, I mean, I know of no other application that builds a log, and certainly I would doubt that there is any one exactly like that. But there is logging built into programs at times.
Q Okay. And what are the other differences, if any, between the Torrential Downpour law enforcement program and the ordinary file-sharing program that the ordinary person can access?
A Well, I have described them, all of the differences, in my testimony.
Q All right. Are the two things that we just went over, are those the two main differences isolating --

10:39:08:24AM A Three.
Q Okay. Give me the third one then.
A Well, we don't share --
Q All right.
A -- we download from a single IP, and we take a very -- we make -- create this detailed log that acts as evidence in the investigation.
Q It's a lot more efficient, I guess, in terms of an investigation to be able to download from a single IP or a single source; right?
A Efficient? No. I would say it's less efficient than the standard program. The standard program downloads from multiple sources downloading very quickly, getting me my material very quickly. It's less efficient because I am -- it's a slower process. I am downloading from one IP address. I am just asking the same IP over and over again for the next piece of data. So it's less efficient. We are more restrictive on ourself than the standard client is because we are going to download from one IP versus many.
Q But if you are targeting a particular individual, I mean, that's one of the benefits of the program. You can isolate on one computer, one IP address, one sharing source, and things of that nature; correct?
A Absolutely, yes.
Q Okay. Now, do you have a financial interest in marketing

10:40:19:12AM this particular piece of enhanced or proprietary software to law enforcement agencies?

A No. The software is free.

Q Okay. The software is free?

A Yes.

MR. AUTRY: Could we bring up Exhibit 2, please. Could we go to page seven?

Q (By Mr. Autry) Now, could you describe again for me, Detective, what this document is exactly?

A That is looking inside a .torrent file. At the top you see a line that says "info hash"?

Q Yes, sir.

A That's the unique identifier to that torrent. And this acts as instructions to a program on how to download this material. This is one of the six torrents that was investigated by -- investigated by Detective Lamer.

Q Okay.

A I don't know his rank. I believe he is a detective.

Q Yes, sir.

A And to be clear, if I were to load this torrent into a program like uTorrent or Vuze, you would see a lot of the same information. It's the instructions. So a standard program can show it. However, this one is our own viewer of torrents.

So then you see how many pieces make up the torrent. Each piece is going to be part of a file or files. You can

10:42:06:18AM see how big each piece is. It's four megabytes. In this collection of files, whoever created this torrent chose to include 36 files, so there is 36 files defined by this torrent. And the total size, if you were to add all of those 36 files together, it would be 8.81 gigabytes. A very large collection.

Q Okay. And this particular page of the document doesn't contain any kind of identifying information as to what IP address this stuff was accessed from; is that correct?

A No. This is the torrent, the instructions. Then you would have to load it into a BitTorrent application and find download candidates. That was part of the other slide.

Q Oh, okay. Is the software that's used by law enforcement, this Torrential Downpour software, does it have to be calibrated or anything done with it before it's utilized in a particular investigation on a particular day?

A No, it doesn't need calibrated. We test it, it runs. It runs the same way all the time.

Q How often does it have to be tested?

A We test it -- we had a validation test done independently and we test it after the individuals trained, and that's the only testing required. Can people test it more? Sure.

Q Okay. So there is not a test or a validation test that's done every time a law enforcement officer utilizes the Torrential Downpour software to conduct an online

10:43:36:15AM investigation to see who is trading or possessing child pornography?

A No. It's not like an Intoxilizer. I think that's what you're asking.

Q Okay. You probably have submitted numerous affidavits for search warrants in child pornography investigations.

A Yes, sir.

Q And when you submit an affidavit or a search warrant where you've used the Torrential Downpour program, do you indicate that a special proprietary law enforcement piece of software was used to conduct the investigation?

A No.

Q You do not? Why not?

A I don't think there was a need. I indicate that I use a BitTorrent piece of software and that the entire download came from a single sharing client. Those are important facts a judge would need to know --

Q All right.

A -- when deciding whether or not I've established probable cause. The name of the software, I didn't feel it to be relevant.

Q All right. Why is there some kind of a privilege that attaches or some kind of law enforcement privilege that attaches to this particular software in light of the fact that the -- you're claiming it only does a couple of different

10:44:55:12AM things than the ordinary file-sharing software would do? Is there a particular reason that it's inaccessible to the public?

MS. BLACKBURN: Objection. Beyond the scope of this particular motion.

THE COURT: That is true. That wasn't gone into.

MR. AUTRY: All right.

Thank you, Detective.

THE COURT: Any further direct examination -- redirect rather?

MS. BLACKBURN: No.

THE COURT: All right.

I don't believe I have any questions for you. Thank you, sir. You may step down.

THE WITNESS: Thank you, your Honor.

THE COURT: Government, anything further from your side?

MS. BLACKBURN: No.

THE COURT: Mr. Autry?

MR. AUTRY: We would call Detective -- excuse me -- Agent Kari Newman.

THE COURT: Ma'am, please come forward, stand in front of the witness chair and be sworn.

(The witness was duly sworn.)

THE CLERK: Please be seated.

10:46:32:15AM **KARI NEWMAN,**

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. AUTRY

Q Could you state your name for the Court, please, ma'am.

A Kari Newman.

Q I'm sorry. I mispronounced your first name. Car-ry, not Care-ry?

A Yes, sir.

Q And could you tell the Court what you do for a living?

A I am a special agent for Homeland Security investigations.

Q Located in Oklahoma City?

A Yes, sir.

Q Are you the case agent in this particular investigation against Mr. Maurek?

A I am.

Q And you are the affiant on the search warrant; is that correct?

A Yes, sir.

Q You put the affidavit together?

A Yes, I did.

Q And it was based both on your training and experience and on information you received from Detective Lamer of the Moore

10:47:09:15AM Police Department; is that correct?
A Yes.
Q Were you working with Detective Lamer at the time he was doing his internet searches or file-sharing searches that led to the evidence discovered in this case online? Or did he contact you after he did all that? How did that work?
A He contacted me after the downloads took place.
Q All right. And the affidavit for search warrant, did you indicate at all that a proprietary law enforcement piece of software was used to access Mr. Maurek's computer?
A I don't believe I did.
Q Or that this was a sole source access using this kind of law enforcement software that's not available to the general public? Did you indicate that?
A The affidavit indicated that it was a single-source download --
Q Uh-huh.
A -- from a single IP address.
Q All right. But as far as the exact software that was used or the type of software that was used, that was not discussed in the affidavit; is that correct?
A There was a description of how the BitTorrent and BitTorrent downloads take place. As far as the name of the software, no, it was not included.
Q Okay. What I am really getting at is there was nothing

10:48:24:06AM in the affidavit that says rather than just using the ordinary BitTorrent network to conduct searches for people who possess child pornography on the network, that, in fact, an enhanced or modified version of the BitTorrent network exclusive to law enforcement was the tool used in this investigation. That's not stated; correct?

A That was a really long question. I am sorry.

Q It was more of a speech than a question. I apologize to you.

What was not stated in the affidavit was that this investigation utilized specialized modified software that's a variation of the BitTorrent network but is used exclusively by law enforcement. That was not stated; correct?

A I don't believe so.

Q All right. Now, the search of Mr. Maurek's apartment was conducted on May 5th of this year?

A That sounds right.

Q Okay. And the warrant limited the search to Mr. Maurek's apartment for computer equipment and things of that nature; correct?

MS. BLACKBURN: Objection. Beyond the scope of the motion.

MR. AUTRY: Your Honor, I received some information that law enforcement -- since the motion was filed that law enforcement went through Mr. Maurek's truck at his residence.

10:49:50:21AM That would be outside the scope of the warrant, which was simply for his apartment. I am trying to establish, to the extent I can through this witness, whether that occurred or not.

THE COURT: Overruled.

MR. AUTRY: Okay. Thank you.

Q (By Mr. Autry) You were not present during the actual search? Or were you?

A Of the apartment?

Q Yes.

A Yes.

Q You were present?

A Yes.

Q Oh, okay. And how many other officers were present with you?

A Maybe eight -- seven or eight. I don't remember off the top of my head.

Q All right. And Mr. Maurek was not present at the apartment when you arrived with the warrant; correct?

A Correct.

Q You talked to somebody who was like a manager of the apartment complex to gain access to the apartment to serve or execute the warrant?

A We obtained the keys so we wouldn't have to destroy property any more than necessary.

10:50:45:24AM Q All right. And when you went through the apartment, you gathered computer equipment, a camera, and some paper documents; right?
A That sounds correct.
Q Okay. It's on the return.
A Yes.
Q But -- everything you gathered from the apartment was on the return.
A Yes.
Q Okay. Now, Mr. Maurek had a vehicle in the parking lot of the apartment complex?
A I believe he did, yes.
Q Okay. Do you remember what kind of vehicle that was?
A I think it was a truck.
Q Do you remember what color it was?
A I want to say white.
Q Okay. And y'all went out and looked at the truck; right?
A We looked at -- yeah.
Q Somebody got in the truck, didn't they?
A I couldn't say if somebody got in the truck.
Q You can't deny it either, can you?
A I did not get in the truck and I did not see anyone else get in the truck.
Q Okay. Did you look inside the truck?
A I'm sure we looked through the windows to see if there

10:51:42:00AM was anything in plain view.
Q Did you look in the bed of the truck?
A I have no idea.
Q Okay. How many officers were looking in the truck or looking at the truck?
A I do not know. I was not out there.
Q Okay. Did you direct any officers to look at or in the truck?
A I believe I asked somebody -- I do not remember who -- to check the truck, see if there was anything in plain view that would indicate a need to get a further search warrant for the truck.
Q When you say check to see if there is "anything in plain view," did that imply that they could open the door -- the truck door and kind of look around to see if there was anything in plain view?
A I could not speak to what they would infer from that. I am not them.
Q Okay.
A I asked that the truck be checked for anything in plain view, which, in my mind, would be from outside the truck.
Q Did they check the truck?
A As far as I know.
Q Okay. Was anything taken from the truck?
A No, sir.

10:52:45:18AM Q Was anything seen by plain view or otherwise in the truck that you thought might have evidentiary value?

A No, sir.

Q Did anybody move the seats of the truck or anything like that?

A I have -- I don't know.

Q Okay. Was the truck locked or unlocked?

A I do not know.

Q All right. Did you have any kind of conversation with any agents after you or somebody directed them to look at the pickup truck as to what they did or what they saw or anything like that?

A My recollection is at some point somebody said the truck is clear.

Q The truck is clear?

A Meaning there is nothing further.

Q All right. Now, the application for the search warrant that you did or the affidavit and the application and the search warrant itself limited the search to Mr. Maurek's residence, didn't it?

A Yes, sir.

Q It did not extend to any vehicles he may have had on the property; correct?

A Correct.

Q All right. Well, to the extent that the warrant was

10:53:48:06AM limited in that way, what reason would there be for you to direct other agents to look at the truck?

A The truck was in a public space. Anybody in the public could go and look in the windows.

Q Okay.

A And, therefore, that would allow us to do the same.

Q Okay. Could anybody in the public open the door of the truck and climb inside?

A I suppose if the doors were unlocked that would be possible.

Q Okay. Was there any kind of tarp or any kind of covering of things in the bed of the truck that you're aware of?

A I -- I don't know.

Q You indicated that you did not personally look in or at the truck but you were aware that the truck was there; right?

A Yes, sir.

Q Okay. Did you look in it or anything like that?

A No, sir.

Q Okay. How many agents went out to look at the truck or in the truck?

A As I stated before, I do not know.

Q I'm sorry. I probably asked you that before.

A You did.

Q Okay. Thank you, Agent.

THE COURT: Cross-examination?

10:55:01:06AM MS. BLACKBURN: No.

THE COURT: Thank you, ma'am. You may step down.

THE WITNESS: Thank you, your Honor.

THE COURT: Mr. Autry?

MR. AUTRY: No further evidence, your Honor, at this time.

THE COURT: Mr. Autry, do you care to present argument? I have read all the briefing, just to let you know. But if you would like to present anything --

MR. AUTRY: Your Honor, we basically stand on our brief. I am trying to get to the bottom of whether or not anybody actually went in the truck. That's why I called Agent Newman. The Court has heard that testimony.

But the Court has got the briefs and the arguments, and we don't have anything additional to add.

THE COURT: All right.

Government counsel, anything additional?

MS. BLACKBURN: No.

THE COURT: All right. Very well.

Thank you all. And I will endeavor to get an order out in this matter as soon as possible.

With that, court is in recess.

(Proceedings concluded at 10:55 a.m.)

10:55:55:09AM

CERTIFICATE OF OFFICIAL REPORTER

I, Christina L. Clark, Federal Official Realtime Court Reporter, in and for the United States District Court for the Western District of Oklahoma, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 1st day of July, 2017.

s/CHRISTINA L. CLARK_____
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